

Date of Hearing: July 12, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 45 (Mendoza) – As Amended April 24, 2017

SENATE VOTE: 40-0

SUBJECT: Political Reform Act of 1974: mass mailing prohibition.

SUMMARY: Prohibits a mass mailing from being sent at public expense by or on behalf of a candidate within 90 days preceding an election at which the candidate will appear on the ballot, as specified. Codifies a regulation that implements a statutory ban on mass mailings sent at public expense. Specifically, **this bill:**

- 1) Codifies a Fair Political Practices Commission (FPPC) regulation regarding mass mailings sent at public expense.
- 2) Prohibits an otherwise permissible mass mailing from being sent at public expense within the 90 days preceding an election by or on behalf of a candidate whose name will appear on the ballot at that election, except as specified.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Prohibits, pursuant to the PRA, any newsletter or other mass mailing from being sent at public expense. Defines "mass mailing," for the purposes of the PRA, as over 200 substantially similar pieces of mail not including mail that is sent in response to an unsolicited request, letter, or other inquiry. Provides, pursuant to regulations adopted by the FPPC, that a mailing is prohibited by this provision of the PRA if all of the following criteria are met:
 - a) A tangible item is delivered to a recipient at his or her residence, place of business, or post office box, as specified;
 - b) The item either features an elected officer affiliated with the agency or includes specified identifying information about an elected officer affiliated with the agency and the officer is involved in preparing or sending the item, as specified;
 - c) Any distribution costs are paid for with public moneys, or more than \$50 in design, production, and printing costs are paid with public moneys with the intent of sending the item other than as permitted; and,
 - d) More than 200 substantially similar items are sent in a calendar month, excluding items sent in response to an unsolicited request, or items that are otherwise explicitly permitted by another specified FPPC regulation.

- 3) Provides that a mass mailing is not prohibited pursuant to the provisions detailed above if it is any of the following:
 - a) An item in which the elected officer's name appears only in the letterhead, logotype, and envelopes of the agency, or in a roster listing containing the names of all elected officers of the agency, as specified (the "letterhead exception");
 - b) A press release sent to members of the media;
 - c) Any item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer;
 - d) Any intra-agency communication sent in the normal course of business to employees, officers, deputies, and other staff;
 - e) Any item sent in connection with the payment or collection of funds by the agency sending the mailing, if the use of the elected officer's name, office, title, or signature is necessary to the payment or collection of the funds, as specified;
 - f) Any item sent by an agency responsible for administering a government program, to persons subject to that program, in any instance where the mailing of such item is essential to the functioning of the program, if the elected officer's name, office, title, or signature is necessary to the functioning of the program, as specified;
 - g) Any legal notice or other item sent as required in which use of the elected officer's name, office, title, or signature is necessary in the notice or other mailing, as specified;
 - h) A telephone directory, organization chart, or similar listing or roster which includes the names of elected officers as well as other individuals in the agency sending the mailing, as specified;
 - i) An announcement of an official agency meeting or event, as specified (the "meeting or event exception");
 - j) An agenda or other writing that is required to be made available as specified, or a bill, file, history, journal, committee analysis, floor analysis, agenda of an interim or special hearing of a committee of the Legislature, or index of legislation, published by the Legislature; or,
 - k) A business card which does not contain the elected officer's photograph or more than one mention of the elected officer's name (the "business card exception").
- 4) Prohibits any elected state or local officer from using or permitting others to use public resources for a campaign activity. Provides that "campaign activity" means an activity constituting a contribution or expenditure as defined under the PRA.

FISCAL EFFECT: According to the Senate Appropriations Committee, the FPPC indicates that it would incur first-year costs of \$141,000, and ongoing costs of \$134,000 (General Fund) to implement the provisions of the bill.

COMMENTS:

1) **Purpose of the Bill:** According to the author:

In California, the Political Reform Act of 1974 prohibits a public officer or candidate from using taxpayer money for the purpose of seeking elected office. This includes sending mass mailings of more than 200 substantially similar pieces. These laws were meant to prevent elected officials from using government-funded communications for campaign purposes or to gain an unfair advantage over their opponents.

However, events during the past several years have underscored the need for more clarity regarding mass mailings by public officials. This bill will provide the clarity needed to prohibit elected officials from abusing their position to influence the democratic process at the expense of taxpayers.

SB 45 will create fairness and transparency by amending the PRA to prevent local and state elected officials, whose names appear on a ballot, from using taxpayer funds to send a mass mailing 90 days before an election.

2) **Mass Mailings and the FPPC:** California voters passed Proposition 73 in 1988 which, among other things, prohibited sending mass mailings at public expense. The broad nature of this prohibition had the potential to prevent governmental bodies from performing essential functions. For example, if interpreted strictly, the ban on mass mailings could prohibit county elections officials from mailing vote by mail ballots to voters, or could prohibit income tax refunds from being mailed. In an effort to implement this mass mailing restriction in a workable manner, the FPPC enacted the regulation that this bill proposes to codify. The FPPC website describes the regulation as follows:

Which Mailings are Prohibited?

A mailing is prohibited under the [PRA] if each of the following criteria is met, unless the item meets one or more exceptions.

(1) Delivery. A tangible item, such as a newsletter or brochure, is delivered, by any means, including by transmission of a fax, to a person's residence, place of employment or business, or post office box. Note: Emails, website postings, text messages, and recorded telephone messages/robocalls are not considered tangible items and therefore, not subject to the [PRA's] mass mailing at public expense restrictions.

(2) Item Features an Elected Officer. The item sent either features an elected officer affiliated with the agency (by including the officer's photo or signature, or

singling out the officer by the manner his or her name or office is displayed), or the item includes a reference to an elected officer affiliated with the agency and the item is prepared or sent in cooperation with the elected officer.

(3) Public Moneys. Any of the costs of distribution are paid for with public moneys, or if public funds are not used for the actual distribution, in excess of \$50 in public moneys is used to design, produce, or print the item and the design, production, or printing is done with the intent of sending the item other than as permitted...

(4) Mass Mailing. More than 200 substantially similar items are sent in a calendar month, excluding any item sent in response to an unsolicited request.

Exceptions - Permissible Mailings

Letterhead - A mailing in which an elected officer's name appears only in the letterhead or logotype of the stationery, forms, and envelopes of the agency, or in a roster listing containing the names of all elected officers of the agency is permissible. The names of all elected officers must appear in the same size, font type, color, and location. The item may not contain an elected officer's photo, signature, or any other reference to the officer.

Meeting Announcement - A "public meeting" announcement sent only to an elected officer's constituents is permitted so long as the meeting is directly related to the elected officer's governmental duties and he or she intends to attend. The item may not contain the elected officer's photo or signature and may include only a single mention of the elected officer.

Event Announcement - An announcement of any official agency event or events for which the agency is providing the use of its facilities or staff, or other financial support is permitted. The item may not contain the elected officer's photo or signature and may include only a single mention of the elected officer.

Normal Agency Business Practices

The following items are not restricted by the [PRA's] mass mailing prohibition.

- Press releases sent to members of the media
- Any item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer
- Any intra-agency communication sent in the normal course of business to employees, officers, deputies, and other staff
- Tax bills, checks, and similar documents, in any instance where use of the elected officer's name, office, title, or signature is necessary to the

payment or collection of the funds

- A telephone directory, organization chart, or similar listing or roster that includes the names of elected officers as well as other individuals in the agency sending the mailing
- Business cards that do not contain an elected officer's photo or more than one mention of the elected officer's name

Constituent Requests

Responses to unsolicited requests are not subject to the [PRA's] mass mailing restrictions. "Unsolicited request" means a written or oral communication that specifically requests a response and that is not requested or induced by the elected officer or any third person acting at the officer's behest. If a person requests continuing information, an elected officer may send multiple responses directly related to that subject for up to 24 months.

Example:

A city councilmember received calls from 50 constituents with questions related to a nearby retail shopping center project. The councilmember may send a response (e.g., flyer), which directly addresses their questions, to those 50 people. The 50 flyers would not be subject to the [PRA's] mass mailing restrictions and therefore, could contain the councilmember's photo and/or signature. In addition, the 50 flyers would not count toward the 200 item per calendar month limit, so the councilmember could send the flyer (or a substantially similar item) to up to 200 other constituents.

- 3) **Assembly and Senate Pre-Election Mail Blackout Periods and Potential Amendment:** While not required by law, the Assembly and Senate both voluntarily have adopted policies that restrict the ability of members to send mail at public expense in the days prior to elections. These policies restrict mailings that would otherwise be permitted under the FPPC regulation. This bill imposes a similar mass mailing blackout period that would apply to all state and local government agencies.

The Assembly's policy prohibits Assembly resources from being used by or on behalf of an Assemblymember to mail or deliver any document, with limited exceptions, to any person during the 60-day period prior to an election. For statewide primary and general elections, this restriction applies to *all* Assemblymembers, regardless of whether their names will appear on the ballot at the statewide election. For any other election, this restriction applies to any Assemblymember who is on the ballot for that election. Furthermore, the Assembly policy applies even to mailings that are *not* mass mailings (i.e., mailings of 200 or fewer substantially similar items per calendar month).

The Senate's pre-election mail policy prohibits any Senate mass mailing from being sent by or on behalf of a Senator in the 90-day period prior to an election at which that Senator's

name appears on the ballot, with limited exceptions.

Because the Assembly's blackout period applies to situations that are not covered under the Senate's policy, members of the Assembly actually face greater constraints on their ability to communicate with constituents about official meetings and events than members of the Senate do, notwithstanding the fact that the Senate's blackout period is longer. For example, in a four year period, *all* members of the Assembly are prohibited from sending mailings about official meetings for a period of at least 240 days (four separate blackout periods of 60 days each—one period for each of the four regularly scheduled statewide elections held during that time). By contrast, over a four year period, a typical Senator is prohibited from sending mass mailings for between zero days (if, for instance, the Senator was termed out and not running for another office) and 180 days (in the case of a Senator who runs for reelection during his or her term). (A member of the Assembly or the Senate who runs for an office other than for reelection may face restrictions on mailings for a longer period of time during the course of a four year period.)

By creating a statutory, 90-day mass mailing blackout period that applies to both the Assembly and the Senate (as well as to other state and local government agencies), this bill would disproportionately affect the Assembly. In light of that fact, the author and the committee may wish to consider amending this bill to impose a 60-day blackout period, instead of a 90-day period.

- 4) **Pre-Election Mass Mailings Prohibited by This Bill:** As detailed above in item #3 of Existing Law, the FPPC's regulation includes 11 identified exceptions to the general ban on mass mailings at public expense. The pre-election mass mailing restriction imposed by this bill applies to mailings that could otherwise be sent pursuant to three of those exceptions: the "letterhead exception"; "the meeting or event exception"; and the "business card exception." This bill does not, however, limit the ability of a public entity to send a mass mailing pursuant to one of the other eight exceptions included in the FPPC's regulation.
- 5) **Technical Amendment:** In order to correct a drafting error, committee staff recommends the following technical amendment:

On page 5, line 28, strike out "regulation" and insert "section".
- 6) **Arguments in Support:** In support of this bill, California Common Cause writes, "Under current law, local elected officials have abused the mass mailing prohibitions to engage in thinly veiled, end-of-campaign electioneering using public money. Incumbents should not be able to use government resources to unfairly bolster their campaigns. SB 45's blackout period has been effective at the state level and provides a straightforward solution to this problem."
- 7) **Related Legislation:** AB 1524 (Brough), which is pending in this committee, prohibits a mass mailing that is permitted to be sent under existing regulations adopted by the FPPC from being sent at public expense within 90 days preceding an election under specified conditions. While testimony was taken on AB 1524, it was not voted on in this committee, and the author made it a two-year bill.

- 8) **Political Reform Act of 1974:** California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause

Opposition

None on file.

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